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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/510,931  | 05/25/2005  | Christoffel Theron   | 1918-045358         | 4871             |
| 28289   | 7590        | 03/22/2006           | EXAMINER            |                  |
| THE WEBB LAW FIRM, P.C.<br>700 KOPPERS BUILDING<br>436 SEVENTH AVENUE<br>PITTSBURGH, PA 15219 |             |                      | GORMAN, DARREN W    |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3752                |                  |

DATE MAILED: 03/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/510,931             | THERON, CHRISTOFFEL |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Darren W. Gorman       | 3752                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 February 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 14-25 is/are pending in the application.
- 4a) Of the above claim(s) 17, 18 and 21 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 14-16, 19, 20 and 22-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/17/2005</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of species Group I in the reply filed on February 10, 2006 is acknowledged. The traversal is on the ground(s) that Applicant believes no serious burden would be placed on the examiner in examining all of the claims in a single application. This is not found persuasive because full consideration and examination of all submitted claims including the limitations of each of the distinct species in the present application would require different fields of search and would therefore place an undue burden on the Examiner. Furthermore, Applicant has not submitted evidence or identified such evidence now of record showing the identified species to be obvious variants or clearly admitted on the record that this is the case.

The requirement is still deemed proper and is therefore made FINAL.

2. Mistakenly, the examiner did not indicate particularly which species claim 21 reads on, however Applicant's assumption (see "Remarks", page 2, paragraph 2) that claim 21 is generic to all four species, is incorrect. Claim 21, which recites the intermediate section defining a "waist portion of reduced diameter", is not generic to all four species, and does not read on the elected species Group I, as shown in Figure 1.

3. Claims 17, 18 and 21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on February 10, 2006.

***Information Disclosure Statement***

4. The IDS filed on March 17, 2005 is hereby acknowledged and has been placed of record.

Please find attached a signed and initialed copy of the PTO 1449.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 14-16, 19, 20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Cox, USPN 4,611,759.

Regarding claims 14, 15 and 19, Cox shows several embodiments of a resiliently flexible emitter tube (see Figures 1-6), each embodiment comprising a base inlet end and a free outlet end, the tube further including a base section adjacent to the base inlet end, an end section downstream from the base section, and an intermediate section disposed between the base section and the end section, wherein the base section has a wall thickness which is greater than a wall thickness of the intermediate section and a wall thickness of the end section, resulting in greater flexibility of the intermediate section and the end section compared to that of the base section, and wherein, with liquid flowing at a sufficient rate through the emitter tube, hydraulic forces exerted by the flowing liquid on the emitter tube cause the outlet end to move continuously (see column 9, lines 37-55).

As to claim 16, Cox shows at least one embodiment wherein it appears that the wall thickness of the emitter tube tapers evenly from the base section to the free outlet end (96) (see Figure 6).

As to claim 20, the embodiment shown in at least Figure 6 of Cox, wherein the wall thickness tapers evenly from the base section to the free outlet end, would inherently result in the end section having greater flexibility than the intermediate section.

As to claim 22, the embodiments shown in at least Figures 1-4 of Cox, show an inner diameter (20, 44) of the emitter tube remaining substantially constant, while the outer profile of the emitter tube along at least a portion of the emitter tube reduces in wall thickness from the base section towards the outlet end.

It should be noted with respect to the recitation, "suitable for an irrigation system", such a recitation is merely reciting an intended use of the apparatus. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, USPQ2d 1647 (1987)

It should further be noted that the above intended use recitation is found in the preamble of the claim and therefore has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951)

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 23-25 rejected under 35 U.S.C. 103(a) as being unpatentable over Cox.

Cox shows all of the recited structural limitations as set forth in claim 14, however Cox is silent with respect to the overall length of the tube, the outer diameter of the base inlet end, the outer diameter of the outlet end, and the inner diameter of the tube.

Cox expressly recognizes that the length of the tube is the principal governing factor (all other factors being equal) with respect to the flexural vibration thereof (see column 9, lines 47-53), and therefore the length of the tube is recognized as a result effective variable. One having ordinary skill in the art would also recognize other result effective structural variables of the tube as being governing factors for the flexural vibration, such as but not limited to, the flexibility characteristics of the flexible material used in forming the tube, the pressure of the fluid flowing through the tube, the inner diameter of the fluid bore, and the outer diameter(s) of the tube.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the emitter tube of Cox, having the recited structural dimensions, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980)

Further, with respect to the recited dimensions of claims 23-25, it should be noted Applicant has not disclosed that such dimensions solve any stated problem or are for any

particular purpose, and therefore lack criticality (see Applicant's specification page 4, lines 16-20).

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents to Holden, Snyder, Weeth, Baker, and Geffroy, are cited as of interest.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Gorman whose telephone number is 571-272-4901. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on 571-272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DWG  
March 7, 2006

  
Darren W Gorman  
Examiner  
Art Unit 3752  
**David A. Scherbel**  
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**Group 3700**